

The Telecommunications Excise Tax Act provides that "[s]ervice address' means the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. See 35 ILCS 630/1 et seq. (This is a GIL.)

May 24, 2007

Dear Xxxxx:

This letter is in response to your letter dated March 25, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

One of my clients is a global provider of business technology communications services to a wide variety of businesses. They offer a variety of conference calling and web-based conference calling and data collaboration services.

Based on the following information please provide a written response regarding the Sales Tax liability of my client (**Teleconferencing Co.** in the below examples) for the provision of conferencing services.

Scenario One:

Participants initiate a conference call by dialing a local telephone number outside of the state of IL, utilizing conferencing equipment outside the state of IL, and incurring long distance fees billed from their long distance provider. **Company A** is located in the state of IL and **Teleconferencing Co.** bills **Company A** to an address in the state of IL. The conference call includes participants from IL, other states, and Canada and areas outside of the United States.

Scenario Two:

Participants initiate a conference call by dialing a local telephone number outside of the state of IL, utilizing conferencing equipment outside the state of IL, and incurring long

distance fees billed from their long distance providers. **Company A** is located outside the state of IL and **Teleconferencing Co.** bills **Company A** to an address outside the state of IL. The conference call includes participants from IL, other states, Canada and locations outside of the United States.

Scenario Three:

Participants initiate a conference call by dialing a toll-free number, utilizing conferencing equipment outside the state of IL. **Company A** pays **Teleconferencing Co.** for the conferencing services, including an imbedded charge for the long distance fees incurred by **Teleconferencing Co.** for providing the toll-free number. Teleconferencing Co. pays for all taxes and surcharges associated with the participants [sic] participation of the conference call. **Company A** is located in IL and **Teleconferencing Co.** bills **Company A** to an address in the state of IL. The conference call includes participants from IL, other states, Canada and locations outside Canada and the United States.

Scenario Four:

Participants initiate a conference call by dialing a toll-free number, utilizing conferencing equipment outside the state of IL. **Company A** pays **Teleconferencing Co.** for the conferencing services, including an imbedded charge for the long distance fees incurred by **Teleconferencing Co.** for providing the toll-free number. Company A pays all associated taxes and surcharges assessed by the provider of long distance services. **Company A** is located outside the state of IL and **Teleconferencing Co.** bills **Company A** to an address outside the state of IL. The conference call includes participants from IL, other states, Canada and locations outside of the United States.

Scenario Five:

Participants initiate a conference call by using the internet and utilizing conferencing equipment outside the state of IL. **Company A** pays **Teleconferencing Co.** conferencing services for the above internet services provided. The conference call includes participants from IL other states, Canada and locations outside of the United States.

If you need additional information, please call me.

DEPARTMENT'S RESPONSE:

The Telecommunications Excise Tax Act (35 ILCS 630/1 et seq.) ("Act") imposes a tax upon the act or privilege of originating or receiving interstate or intrastate telecommunications by a person in Illinois at the rate of 7% of the gross charges for telecommunications purchased at retail from a retailer. This tax must be collected from persons by "retailers maintaining a place of business in Illinois." See Section 4.5 of the Act.

Section 2(c) of the Act defines "telecommunications," and states that this term does not include "value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission." Section (2)(a)(3) of the Act states that the term, "gross charge," which forms the basis for the tax, does not include "charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content."

Please note that persons providing customers with the Internet access, but who also provide customers the use of 1-800 service, and separately assess customers with per minute charges for the use of such 1-800 numbers, are considered to be telecommunications retailers. Such retailers will incur Telecommunications Excise Tax on charges made for such 1-800 services. If, however, such Internet service providers do not separately assess customers with per minute charges, but pay their own providers for all transmission costs for the 1-800 service, they would not be considered to be telecommunications retailers.

If Internet access service providers provide both transmission and data processing services, the charges for each must be disaggregated and separately identified. See 86 Ill. Adm. Code 495.100(c). The statute does not require disaggregation on the customers' invoice, however. Therefore, it is the Department's position that so long as the non-telecommunications charges are disaggregated from the telecommunications charges in the retailers' books and records, for audit purposes, such disaggregation need not be shown on the customers' invoice. If the non-telecommunications charges are not disaggregated from the telecommunications charges, the full amount will be subject to Telecommunications Excise Tax. If none of the charges billed are for telecommunications, then none of the charges would be subject to tax.

Section 2(n) of the Act provides that "[s]ervice address' means the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phone, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent." Section 8 of the Act provides that if persons who originate or receive telecommunications in this State claim to be a reseller of such telecommunications, such persons shall apply to the Department for a resale number. Upon approval of the application, the Department shall assign a resale number to the applicant and certify such number to him.

Teleconferencing represents an especially difficult application of the term "service address". We are currently examining this issue. In addition, this issue is being examined by the Streamlined Sales Tax Project. When we have resolved this issue, we anticipate that the Department of Revenue will promulgate a rule on the subject.

Except as provided in the Act, the act or privilege of originating or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active telecommunications resale number from the Department and furnishes that number to the retailer in connection with sales of telecommunications for resale.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Jerilynn Troxell Gorden
Deputy General Counsel
Sales and Excise Taxes